

IN THE MATTER OF THE ONTARIO HUMAN  
RIGHTS CODE R.S.O. 1970, CHAPTER 318  
AS AMENDED

AND IN THE MATTER OF A COMPLAINT BY  
MARILYN ROBERTS AGAINST BREWERS  
WAREHOUSING COMPANY LIMITED AND  
ALAN EARNSHAW

BOARD OF INQUIRY

Bruce Dunlop

APPEARANCES

Janet Minor and  
G.W. Dan Kirby -

For the Ontario Human  
Rights Commission

J.W. Healy, Q.C. -

For Brewers Warehousing  
Co. Ltd.



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On December 3rd, 1979, Marilyn Roberts filed a complaint of discrimination under the Ontario Human Rights Code against Brewers Warehousing Co. Ltd., and its group manager in Oshawa, Mr. Alan Earnshaw, alleging that she had been denied a promotion because of her sex contrary to s.4(1), (c), (e), (f), of the Ontario Human Rights Code, R.S.O. 1970 c.318 as amended. In December 1980 this board was appointed to hear the complaint and the hearing took place on April 14th, and 15th, 1981.

The complaint arose out of a decision as to who should be appointed to a position that would become vacant through the retirement of the incumbent. Mrs. Roberts was a candidate for the job. So was a man called Robert Blair. Mr. Blair was appointed.

Having heard the evidence and the able arguments of counsel for Mrs. Roberts and the Ontario Human Rights Commission on one side and the company and Mr. Earnshaw on the other the Board concluded that while it could understand Mrs. Roberts feeling that she had been the victim of discrimination based on sex it was nevertheless the case that Mr. Blair was chosen because he had better qualifications. Hence, the Board's conclusion is that there has been no breach of the Code.

Starting at the age of 18, Mrs. Roberts had worked for the respondent company in the office of it's Oshawa depot as a clerk III doing secretarial and clerical work for over six years. She realized in the late summer of 1979 that the only other permanent employee in the office, Mr. Stanley Cowling, a clerk VII was within a few months of retirement. Mrs. Roberts decided that she would like to be promoted



to fill the vacancy. Mrs. Roberts had done many of the tasks associated with Mr. Cowling's job when Mr. Cowling was on holidays or absent for other reasons. She did them competently and could readily have learned to do the other tasks as well. She therefore approached Mr. Earnshaw and inquired about her prospects. She had several conversations with Mr. Earnshaw over a period of time and made a formal application to be considered for the job.

Had the position to be filled remained in essence as it was during Mr. Cowling's tenure, it would seem that Mrs. Roberts would have been the better qualified candidate. Indeed, on the assumption that Mr. Earnshaw's immediate superior, the district manager might decide that the job should remain in essence the same, Mr. Earnshaw recommended Mrs. Roberts for it. However, it was Mr. Earnshaw's preference to change the nature of the job when Mr. Cowling retired and to make the new incumbent responsible for additional duties including filling in on a relief basis as warehouse foreman and retail store manager. The job would be a training ground for a manager's position and Mr. Blair had earlier applied for such a post. Mr. Earnshaw thought that Mr. Blair possessed the necessary qualifications and experience for this expanded version of the position and that Mrs. Roberts did not.

Mr. Blair was older, had 3 years of university education, had worked as a loans officer in a bank for 11 years, as a part time employee in Brewers Retail stores for 16 years and a full time employee for several months prior to his consideration for the position in question. He had supervisory experience and was clearly more



practiced at dealing with people, particularly customers, than was Mrs. Roberts whose only customer contact was in connection with telephone orders. Mr. Blair had a familiarity with store operations that Mrs. Roberts lacked. And although he had no depot office experience, much of the documentation he would be responsible for handling in the new job would be somewhat familiar to him from his experience in stores where it originated. There was general agreement that he would be able to learn that part of the work without much difficulty. On the other hand, learning to supervise people is not something that is readily or speedily accomplished and Mr. Blair's background gave him a decided advantage over Mrs. Roberts for these elements of the job.

This is not to denigrate in any way Mrs. Roberts' ability or potential but merely to say that it had not been developed to the level of Mr. Blair's at the time in question.

It being Mr. Earnshaw's preference to expand the job so as to lighten his own obligations, his recommendation to the district manager was that Mr. Blair fill the expanded job. According to Mr. Earnshaw's evidence the district manager agreed that the job should be expanded to relieve Mr. Earnshaw and agreed that Mr. Blair should be selected.

Notwithstanding Mr. Blair's qualifications, Mrs. Roberts got the impression that one of the factors operating in his favour and against her was that she was a woman. There were several bases for this feeling. There was evidently a belief common among employees in the Oshawa group (Mrs. Roberts called it "common knowledge") that the district manager, Mr. Lee did not want women to be managers.





Indeed one witness who had been a store manager in the Oshawa area, testified that he had heard Mr. Lee say that women should not be hired for any store work. Mr. Earnshaw had never heard Mr. Lee express this opinion nor heard it attributed to him. But whether or not Mr. Lee was opposed to women working in stores, the belief that he held such a view would lead naturally to the feeling that it had been a factor operating against Mrs. Roberts.

Mrs. Roberts testified that in one of her conversations with Mr. Earnshaw about her desire to be promoted Mr. Earnshaw had told her that there were no openings in the company at the time for a woman as manager. Mr. Earnshaw denied having said this. He said that the policy of the company was to hire the best possible person without discrimination. This view was endorsed by Charles V. Jones, Vice-President, Personnel of the Brewers Warehousing Company. Exhibit 7 was a letter from Mr. Jones to district managers dated 24 November, 1977 which recited a complaint in another part of the province of sex discrimination and which concluded "that our policy will continue to be to select without discrimination the applicant best qualified to do our work".

While it may be that Mr. Earnshaw did not say and would not say that there was a company policy against hiring women he must have said something to create that impression in Mrs. Roberts' mind. His surprise at her expression of interest in a managerial job, his attempts to persuade her that she would not care for such a job because of some of its less pleasant aspects and a general lack of clarity in the explanation of his thinking and his decision could



... may have been open to the construction that her sex had an effect on his views as to her suitability for promotion and managerial responsibility. This lack of clarity would have done little to assist Mrs. Jones in that Mr. Jones was motivated by prejudice in the particular case.

Mrs. Roberts did know that the proportion of women in managerial positions in the company is small. In fact, on the evidence, only 3 out of 577 managerial positions were held by women and all of those were in the company's head office in Toronto.

Because the main business of the company is operating beer stores it is natural that something of the order of 80% of managerial jobs are in stores. It is natural, too, that many of the more senior managers would have come from stores by way of promotion. Since Mr. Jones was only aware of a handful of women ever having worked in stores and of only one ever having become managers of stores his inference Mrs. Roberts might have drawn would scarcely have been unreasonable. Although she could not have had detailed figures the overwhelming maleness of the organization would have been obvious.


The explanation given by Mr. Jones for the overwhelming preponderance of men in the company was a lack of interest by women. One of the few women that had, he said, were women. The few that had, to Mr. Jones's knowledge, did not stay. His view was that the physical appearance of the women were what deterred female interest. The company had, he said, been aware of this lack of interest, had decided against a recruitment program.



As Mr. Healey suggested in argument, the situation might have been different if the company had begun years ago to stress the importance of hiring women. One wonders whether the situation will ever change unless affirmative action is taken. Store jobs are filled through applications made to stores and the evidence was that there were enough applications to make advertising completely unnecessary. In an occupation where it is obvious that all employees are men, this would certainly seem to operate as a disincentive to applications by women. No such situation exists in the clerical stream where both men and women are found at all levels including level VII and above. Perhaps the company should think again about an affirmative action programme.

Two points emerge. The first is that there was certainly some basis for Mrs. Roberts concern over the reasons for her not being selected for promotion. The second is, that whatever the statistical and other evidence may suggest about the need for action on the company's part to make their non-discrimination policy practically effective, it does not establish that there is currently a policy against the hiring of women or, and this is the crucial point for the purposes of Mrs. Roberts' complaint, that there was discrimination based on sex involved in the choice of Mr. Blair over Mrs. Roberts.

The complaint must therefore be dismissed.

  
Bruce Dunlop  
Chairman

